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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/824,705
Filing Date: April 15, 2004
Appellant(s): SCHOENBERG, ROY

Dawn-Marie Bey
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 5, 2010 appealing from the Office action mailed October 26, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

No new grounds of rejection.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

7076436	**Ross et al.**	**7-2006**

2003/0097573	**Wheeler et al.**	**5-2003**
2003/0091158	**Puchek et al.**	**5-2003**
2004/0254816	**Myers**	**12-2004**
2005/0021369	**Cohen**	**1-2005**
2005/0021519	**Ghouri**	**1-2005**

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1 - 38 rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al., herein after Ross (U.S. Patent Number 7,076,436 B1) in view of Wheeler et al., herein after Wheeler (U.S. Publication Number 2003/0097573 A1) further in view of Puchek et al., herein after Puchek (U.S. Publication Number 2003/0091158 A1).

In regard to claim 1 (Previously Presented), Ross teaches a data entry method comprising: in a computer-based medical record including a plurality of data fields (Figures 5, 6, and 7; column 1, lines 17 – 37 where the master patient module is equated to a computer based medical record), defining one or more data fields for which desired field data is to be acquired (Figure 5 where data fields include, but are not limited to, prescriptions, physician notes, and nurses notes); receiving, by said computer-based application, the desired field data from the data source (column 4, line 67 through column 5, line 3) where the desired data is the patient data; and, triggering, by said computer-based application, contacting said data source in possession of the desired field data in accordance with said schedule (Figure 5 and

column 11, lines 13 – 19) where Ross discloses a method in which a schedule is set in which a physician must contact a patient. A schedule is interpreted as a window or time frame allotted to call.

Wheeler teaches a method comprising: automatically populating at least one of the one or more data fields with desired field data from a data source (Wheeler: paragraphs [0130] and [0299] where Wheeler discloses that the fields/menus can be automatically filled in by the computer using information stored in cookies),

Puchek teaches a method automatically comprising: receiving, by a computer-based application that is stored to a computer-readable medium and executing on a processor-based computer (paragraph [0014]): a schedule for contacting said data source to prompt said data source for the desired field data for said at least one data field (paragraph [0014]). Puchek discloses a personal communication device worn by a patient (i.e. data source) as well as a computer system which stores a contact plan (i.e. schedule). The computer contacts the patient's communication device using an automated phone call to transmit information to the patient.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method automatically comprising: receiving, by a computer-based application that is stored to a computer-readable medium and executing on a processor-based computer: a schedule for contacting said data source to prompt said data source for the desired field data for said at least one data field as taught by Puchek, within the method of Ross and Wheeler, with the motivation of providing a communication system which can automatically contact a patient and provide necessary reminders (paragraph [0009]).

In regard to claim 2 (Previously Presented), Ross, Wheeler, and Puchek teach the method of claim 1. Ross teaches a method further comprising updating, by said computer-based application, the computer-based medical record to include the received desired field data (column 7, lines 15 – 16; column 9, lines 23 – 31; and, column 14, lines 12 – 19).

In regard to claim 4 (Previously Presented), Ross, Wheeler, and Puchek teach the method of claim 1. Ross further teaches a method wherein the data source is a patient and the medical record defines at least a portion of the medical history of the patient (column 9, lines 16 – 31) where the patient history is entered, thus the data source is the patient.

In regard to claim 5 (Original), Ross, Wheeler, and Puchek teach the method of claim 1.

Wheeler teaches a method wherein contacting a data source includes: authenticating the data source (Figures 5B, 8, and 12; paragraphs [0130], [0138], and [0153]).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method wherein contacting a data source includes: authenticating the data source as taught by Wheeler, within the method of Ross, with the motivation of providing a method of electronically communicating information concerning medical records such as medical history, known allergies and major medical conditions (paragraph [0230]).

In regard to claim 6 (Original), Ross, Wheeler, and Puchek teach the method of claim 5. Ross further teaches a method wherein authenticating the data source includes: requiring that the data source enter an electronic password (column 6 lines 50 – 64 and column 12, line 46 through column 13, line 2). Although Ross does not explicitly teach a data source (or patient) entering an electronic password, it is obvious that the same process would be used to enter the password regardless of who was entering the password.

Wheeler teaches a method including receiving the electronic password (paragraph [0148]).

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 5, and incorporated herein.

In regard to claim 7 (Previously Presented), Ross, Wheeler, and Puchek teach the method of claim 5.

Wheeler teaches a method wherein authenticating the data source includes: requiring that the data source speak a verbal password (paragraphs [0149] and [0241]) and receiving the verbal password (paragraphs [0149] and [0241]) where Wheeler discloses verbal authentication.

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 5, and incorporated herein.

In regard to claim 8 (Previously Presented), Ross, Wheeler, and Puchek teach the method of claim 5.

Wheeler teaches a method wherein authenticating the data source includes: requiring that the data source provide an authenticating digital certificate (paragraphs [0007], [0008], [0009], [0010], and [0011]) and receiving the authenticating digital certificate (paragraphs [0007], [0008], [0009], [0010], and [0011]).

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 5, and incorporated herein.

In regard to claim 9 (Original), Ross, Wheeler, and Puchek teach the method of claim 1.

Wheeler teaches a method wherein contacting a data source includes: transmitting an email to the data source (Figure 57 and paragraph [0259]) where a customer can be equated to the data source (patient).

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 5, and incorporated herein.

In regard to claim 10 (Original), Ross, Wheeler, and Puchek teach the method of claim 9. Ross teaches a method wherein contacting a data source further includes: providing the data source with text-based instructions concerning the desired field data (Figure 5; column 9, lines 23 – 31; column 10, lines 48 – 49; and column 11, lines 39 – 43).

In regard to claim 11 (Original), Ross, Wheeler, and Puchek teach the method of claim 1. Ross teaches a method wherein contacting a data source includes: telephonically contacting the data source (column 5, lines 27 – 35) where Ross discloses a telephone system which can be used for network communication. Although Ross does not explicitly teach contacting a data source via a telephone, it would be obvious that this communication could occur based on the existence of a telephone system.

In regard to claim 12 (Original), Ross, Wheeler, and Puchek teach the method of claim 11.

Wheeler teaches a method wherein contacting a data source includes: providing the data source with speech-based instructions concerning the desired field data (paragraphs [0213]).

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 5, and incorporated herein.

In regard to claim 13 (Previously Presented), Ross, Wheeler, and Puchek teach the method of claim 1. Ross further teaches a method wherein the desired field data concerns a numeric range-based variable that can accept any numeric value within a range of valid numeric values (Figure 5; column 7, lines 15 – 16; column 9, lines 23 – 31; and column 11, lines 12 – 19) where Ross discloses a method where vital signs are recorded. The Examiner interprets a range of valid numeric values to be any value read during a reading of a vital sign.

In regard to claim 14 (Previously Presented), Ross teaches a data entry method comprising: in a computer-based medical record including a plurality of data fields (Figures 5, 6, and 7; column 1, lines 17 – 37), defining one or more data fields for which desired field data is to be acquired (Figure 5), wherein the medical record defines at least a portion of the medical history of a patient (column 9, lines 15 – 31); receiving, by said computer-based application, the desired field data from the patient (column 4, lines 15 – 31); and updating, by said computer-based application, the computer-based medical record to include the received desired field data (column 7, lines 15 – 16 and column 14, lines 12 – 19). triggering, by said computer-based application, telephonically contacting the patient (Figure 5 and column 11, lines 13 – 19).

Wheeler teaches a method comprising: automatically populating at least one of the one or more data fields with desired field data from the patient (paragraphs [0130] and [0299]).

Puchek teaches a method automatically populating comprising: receiving, by a computer-based application that is stored to a computer-readable medium and executing on a processor-based computer, a schedule for contacting said patient to prompt said patient for the desired field data for said at least one data field (paragraph [0014]).

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 1, and incorporated herein.

In regard to claim 15 (Original), Ross, Wheeler, and Puchek teach the method of claim 14.

Wheeler teaches a method wherein telephonically contacting the patient includes: authenticating the patient (Figures 5B, 8, and 12; paragraphs [0130], [0138], and [0153]).

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 5, and incorporated herein.

In regard to claim 16 (Original), Ross, Wheeler, and Puchek teach the method of claim 15. Ross further teaches a method wherein authenticating the patient includes: requiring that the patient enter an electronic password (column 6 lines 50 – 64 and column 12, line 46 through column 13, line 2).

Wheeler teaches a method including receiving the electronic password (paragraphs [0148] and [0149]).

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 5, and incorporated herein.

In regard to claim 17 (Previously Presented), Ross, Wheeler, and Puchek teach the method of claim 15.

Wheeler teaches a method wherein authenticating the patient includes: requiring that the patient speak a verbal password receiving the verbal password (paragraphs [0149] and [0241]). Wheeler discloses a biometric value.

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 5, and incorporated herein.

In regard to claim 18 (Original), Ross, Wheeler, and Puchek teach the method of claim 14.

Wheeler teaches a method wherein contacting a patient includes: providing the patient with speech-based instructions concerning the desired field data (paragraphs [0213]).

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 5, and incorporated herein.

In regard to claim 19 (Previously Presented), Ross, Wheeler, and Puchek teach the method of claim 14. Ross further teaches a method wherein the desired field data concerns a numeric range-based variable that can accept any numeric value within a range of valid numeric values (Figure 5; column 7, lines 15 – 16; column 9, lines 23 – 31; and column 11, lines 12 – 19).

In regard to claim 39 (Previously Presented), Ross, Wheeler, and Puchek teach the method of claim 1. Ross further teaches a method comprising where at least one data field for which said data source is to be contacted in accordance with said schedule (Figure 5 and column 11, lines 13 – 19).

Wheeler further teaches a method comprising: receiving, by the computer-based application, selection of said at least one data field for which said data source is to be contacted in accordance with said schedule to prompt said data source for the desired field data (Figures 24 and 28; paragraphs [0231], [0234], [0241], and [0245]).

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 5, and incorporated herein.

In regard to claim 40 (Previously Presented), Ross, Wheeler, and Puchek teach the method of claim 14. Ross further teaches a method comprising where at least one data field for which said data source is to be contacted in accordance with said schedule (Figure 5 and column 11, lines 13 – 19).

Wheeler further teaches a method comprising: receiving, by the computer-based application, selection of said at least one data field for which said data source is to be contacted in accordance with said schedule to prompt said data source for the desired field data (Figures 24 and 28; paragraphs [0231], [0234], [0241], and [0245]).

The motivation to combine the teachings of Ross, Wheeler, and Puchek is discussed in the rejection of claim 5, and incorporated herein.

Computer program product claims 20 – 38 and 40 - 41 repeat the subject matter of method claims 1 – 19 and 39 as a set of apparatus elements rather than a series of steps. As the underlying elements of claims 1 – 19 and 39 have been shown to be fully disclosed by the teachings of Ross, Wheeler, and Puchek in the above rejection of claims 1 – 19 and 39, it is readily apparent that the computer program product apparatus performs these steps. As such, these limitations (20 – 38 and 40 - 41) are rejected for the same reasons given above for method claims 1 – 19 and 39, and incorporated herein.

(10) Response to Argument

In the appeal brief filed January 5, 2010, Appellant makes the following arguments:

A. Rejections Under 35 U.S.C. §103 over Ross, in view of Wheeler and Puchek

1. Independent claim 1 and dependent claims 4 - 8, 11 - 13, and 39:

The applied combination of Ross, Wheeler, and Puchek do not teach or suggest automatically populating at least one data field of a computer based medical record or receiving by a computer based application a schedule for contacting a data source and triggering by the computer based application contacting of a data source in possession of desired field data in accordance with the schedule.

2. Dependent claim 2:

The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest "updating, by said computer based medical record to include the received desired field data."

3. Dependent claim 9:

The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest "wherein contacting a data source includes transmitting an email to the data source" and "to prompt said data source for the desired field data for said at least one data field." In addition, the office action was inconsistent concerning contacting a data source.

4. Dependent claim 10:

The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest "wherein contacting a data source includes: providing the data source with text-based instructions concerning the desired field data." In addition, the office action was inconsistent concerning contacting a data source.

5. Independent claim 14 and dependent claims 15 – 19 and 40

The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest automatically populating at least one data field of a computer based medical record or receiving by a computer based application a schedule for contacting a patient, triggering by the computer based application telephonically contacting the patient, and updating by the computer based application the computer based medical record to include field data received by the patient.

6. Independent claim 20 and dependent claims 24 – 27 and 30 – 32

The Examiner has filed to establish a prima facie case of obviousness. The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest schedule one or more times for contacting a data source to prompt said data source for the desired field data for at least one data field of a computer based medical record and contacting the data source in accordance with the schedule and receiving the desired field data from the data source.

7. Dependent claim 21

The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest "instructions for updating, by said computer based medical record to include the received desired field data."

8. Dependent claim 28

The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest "wherein the instructions for contacting a data source include instructions for transmitting an email to the data source" and "to prompt said data source for the desired field data for said at least one data field." In addition, the office action was inconsistent concerning contacting a data source.

9. Dependent claim 29

The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest "wherein the instructions for contacting a data source include instructions for: providing the data source with text-based instructions concerning the desired field data." In addition, the office action was inconsistent concerning contacting a data source.

10. Independent claim 33 and dependent claims 34 – 38 and 41

The applied combination of Ross, Wheeler, and Puchek do not teach or suggest in accordance with a defined contact schedule, autonomously telephonically contact the patient for requesting the desired field data from the patient, receive the desired field data from the patient, and update the computer based medical record to include the desired field data.

Examiner will address Appellant's arguments in sequence as they appear in the brief.

B. Responses to Appellant's Arguments

1. Independent claim 1 and dependent claims 4 - 8, 11 - 13, and 39:

In regard to claim 1, the Appellant argues the applied combination of Ross, Wheeler, and Puchek do not teach or suggest (a) automatically populating at least one data field of a computer based medical record or receiving by a computer based application a schedule for contacting a data source nor (b) triggering by the computer based application contacting of a data source in possession of desired field data in accordance with the schedule. The Examiner respectfully disagrees.

(a) The Examiner respectfully submits that Wheeler discloses a method of automatically populating at least one or more data fields with data from a data source (paragraphs 130 and 299). Wheeler presents examples of how the invention may work in different business applications to illustrate the scope and possible implementations of the method (paragraphs 176 and 293). For instance, Wheeler discloses a Patient/Personal Medical Records Account (paragraph 225), then further discloses an e-business transaction using a Financial Institution (paragraph 294), where the data fields are populated using information stored in cookies, which are old and well known in the industry to identify and submit information for or about the user. As Wheeler disclosed, the different business areas (i.e. finance, medical records) are examples of how the invention may be used. Therefore, it would be reasonable for features disclosed in one area to be used in another area.

Thus, one of ordinary skill in the art would have found it obvious to automatically populate a data field, as one of ordinary skill in the art will realize if you can populate data in a data field in one area, you will be able to populate it in another area.

In addition, the Appellant argues that the medical record system is performed using a two-party account based digital system (ABDS) and the e-business system is performed using a three-party ABDS. The Examiner respectfully submits that the two-party ABDS includes an account hold and account authority, while the three party ABDS includes both the account holder and account authority along with an intermediary, in which all communication is through. Although a medical record transaction (as disclosed by Wheeler) is illustrated using a two-party ABDS, it is obvious that the system can use a three-

party ABDS (using an intermediary for communication) as the process of automatically populating a database would remain the same regardless of which ABDS system is used.

(b) The Examiner respectfully submits that Ross discloses triggering by the computer based application contacting of a data source in possession of desired field data in accordance with the schedule (Figure 5 and column 11, lines 13 – 19). Ross discloses a method in which a schedule is set in which a physician must contact a patient (the Examiner interprets a schedule is as a window or time frame allotted for the physician to contact the patient and a data source as, in this instance, a patient or a patient device/monitor since the patient/monitor has the information needed to complete the data fields – a detailed discussion of data sources in discussed below with dependent claim 9). If a patient is not contacted within a specified time, an alarm in generated.

Further support is provided by Puchek. Puchek discloses a personal communication device worn by a patient (i.e. data source) as well as a computer system which stores a contact plan (i.e. schedule). The computer contacts the patient's communication device using an automated phone call to transmit information to the patient (paragraph 104).

2. Dependent claim 2:

The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest "updating, by said computer based medical record to include the received desired field data." The Examiner respectfully disagrees. The Examiner submits that the Ross reference teaches a method which comprises updating, by said computer-based application, the computer-based medical record to include the received desired field data (column 7, lines 15 – 16; column 9, lines 23 – 31; and, column 14, lines 12 – 19). Ross discloses a patient's latest vitals are displayed, thus indicating that the medical record is updated. In addition, Ross provides a Nurses module which allows nurses to electronically update a patient's medical record by recording notes and vital signs.

3. Dependent claim 9:

The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest "wherein contacting a data source includes transmitting an email to the data source" and "to prompt said data source for the desired field data for said at least one data field." In addition, the office action was inconsistent concerning contacting a data source. The Examiner respectfully disagrees. The Examiner submits that the Wheeler reference teaches a method wherein contacting a data source includes: transmitting an email to the data source (Figure 57 and paragraph [0259]) where a customer can be equated to the data source (patient). As stated above, Ross discloses a data source (Figure 5 and column 11, lines 13 – 19). A data source is interpreted as a patient or a medical device/monitor associated with a patient. The Examiner grouped the patient and device/monitor associated with the patient together as the data for the data field is supplied by the patient or device/monitor. Thus, Ross, in combination with Wheeler (who discloses the transmission of an e-mail to the data source) disclose the features of the Appellant's limitation.

4. Dependent claim 10:

The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest "wherein contacting a data source includes: providing the data source with text-based instructions concerning the desired field data." In addition, the office action was inconsistent concerning contacting a data source. The Examiner respectfully disagrees. The Examiner respectfully submits that the Ross reference teaches a method wherein contacting a data source further includes: providing the data source with text-based instructions concerning the desired field data (Figure 5; column 9, lines 23 – 31; column 10, lines 48 – 49; and column 11, lines 39 – 43). The response to the Appellant's argument has been addressed in the response to dependent claim 9.

5. Independent claim 14 and dependent claims 15 – 19 and 40

The applied combination of Ross, Wheeler, and Puchek fails to teach or suggest automatically populating at least one data field of a computer based medical record or receiving by a computer based application a schedule for contacting a patient, triggering by the computer based application telephonically contacting the patient, and updating by the computer based application the computer based medical record to include field data received by the patient. The Examiner respectfully disagrees. The Examiner respectfully submits: the Ross reference teaches triggering, by said computer-based application, telephonically contacting the patient (Figure 5 and column 11, lines 13 – 19) as discussed above and the Wheeler reference teaches a method comprising: automatically populating at least one of the one or more data fields with desired field data from the patient (paragraphs [0130] and [0299]) as discussed above.

The Puchek reference teaches a method automatically populating comprising: receiving, by a computer-based application that is stored to a computer-readable medium and executing on a processor-based computer, a schedule for contacting said patient to prompt said patient for the desired field data for said at least one data field (paragraph [0014]). Puchek discloses a processor controlled computer system (claim 54) in which a patient is contacted based on a schedule. The communication data is recorded and stored on computer readable media (paragraph 45).

6. Independent claim 20 and dependent claims 24 – 27 and 30 – 32

The response to the argument for claim 20 and dependent claims 24 – 27 and 30 – 32 have been addressed above (*Independent claim 1 and dependent claims 4 - 8, 11 - 13, and 39)*, and incorporated herein.

7. Dependent claim 21

The response to the argument for claim 21 has been addressed above (*Dependent claim 2)*, and incorporated herein.

8. Dependent claim 28

The response to the argument for claim 28 has been addressed above (*Dependent claim 9)*, and incorporated herein.

9. Dependent claim 29

The response to the argument for claim 29 has been addressed above (*Dependent claim 10)*, and incorporated herein.

10. Independent claim 33 and dependent claims 34 – 38 and 41

The response to the argument for claim 33 and dependent claims 34 – 38 and 41 have been addressed above (*Independent claim 14 and dependent claims 15 - 19 and 40)*, and incorporated herein.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Kristine K Rapillo/

Examiner, Art Unit 3626

Conferees:

/Robert Morgan/

Supervisory Patent Examiner, Art Unit 3626

Vincent Millin /vm/
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